

GOVERNMENT OF GUAM

And

---

GROUP HEALTH INSURANCE AGREEMENT

October 1, 2020– September 30, 2021

**Preamble**

This Agreement is made effective by and between the GOVERNMENT OF GUAM ("GovGuam") and \_\_\_\_\_. The effective date of this Agreement is October 01, 2020.

**Recitals**

WHEREAS, Company is an insurance company duly licensed to do business in Guam; and

WHEREAS, Company is qualified to provide a group health insurance program to GovGuam; and

WHEREAS, GovGuam selected Company to provide group health insurance benefits to GovGuam active and retired employees, their dependents, survivors of retired employees who receive annuity benefits, and foster children; and

WHEREAS, Company offers group health insurance program benefits, as hereinafter set forth, under a group health insurance plan known as the "Government of Guam Plan", and

WHEREAS, the parties wish to enter into an agreement defining their mutual rights and obligations.

NOW, THEREFORE, in consideration of the premises, mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1

### Preamble and Recitals

The preamble and recitals set forth above are hereby incorporated into and made a part of this Agreement.

## ARTICLE 2

### General Provisions

**2.1 Definitions:** The following words and phrases shall have the following meanings, unless a different meaning is required by the context. Words in the singular shall include the plural unless the context indicates otherwise. These are general definitions and are not an indication of the existence of a benefit. The definitions shall control the interpretation of this Agreement, Enrollment forms, any identification cards, any supplements and the performance hereunder, unless the term is otherwise specifically defined or modified within a particular section of this Agreement.

**2.1.1 Agreement:** Shall be defined as this Group Health Insurance Agreement including Exhibits A through D.

**2.1.2 Covered Person:** Shall be defined as a person entitled to receive Covered Services pursuant to the Plan. A Covered Person shall reside in the Service Area and shall be:

**2.1.2.1** a bona fide employee of GovGuam who is classified as a full-time employee by GovGuam; or

**2.1.2.2** voluntarily working under the "Quality Time" program and classified as such by GovGuam pursuant to P.L. 25-72; or

**2.1.2.3** classified as a retiree of GovGuam by GovGuam; or

**2.1.2.4** classified as a survivor of a retired employee of GovGuam by GovGuam; or

**2.1.2.5** except as otherwise provided in this Agreement, a dependent as defined under the Plan.

**2.1.2.6** a foster child residing in the Service Area and under the legal custody of the Child Protective Services Division of the Department of Public Health as defined in 4 G.C.A. § 4301.1(h)

**2.1.3 Covered Services:** Shall be defined as medically necessary services, as defined under the Plan, that are not specifically excluded from coverage by this Agreement and other Services which are specifically included.

**2.1.4 Currency:** Shall be defined as money accepted as a medium of exchange for payment of debts such as the United States Dollar in the United States and the Peso in the Philippines.

**2.1.5 Deductible:** Shall be defined as the amount paid by a Covered Person or Family for Covered Services during a Plan Year before Covered Services shall be paid by the Company under this Agreement. No deductible shall apply to preventive services as defined by PPACA, annual refraction eye exam, primary physician care, specialty care visits, prescription drugs, routine laboratory, urgent care, outpatient executive checkup and routine x-ray.

**2.1.6 Domicile:** Shall be defined as the place where a person has his or her true, fixed, and permanent home and principal establishment, and to which whenever that person is absent that person has the intention of returning. A person shall have only one domicile at a time.

- 2.1.7 Eligible Charge(s):** Shall be defined as the portion of charges made to a Covered Person for Covered Services rendered which are payable to the Provider under this Agreement. For a Participating Provider, the Eligible Charges shall be the reimbursement amounts agreed to between the Company and the Participating Provider. For a Non-Participating Provider, the Eligible Charges for covered medical Services rendered by a provider who is not a Participating Provider, shall be limited to the lesser of (a) the actual charge made by the provider, or (b) in the United States, the Medicare Participating Provider fees in the geographic area where the Service was rendered; or (c) in Asia, the fees most recently contracted by the Company at St. Luke's Medical Center, Manila, Philippines, or (d) elsewhere, the Medicare National Standard Fee.
- 2.1.8 Enrollment:** Shall be defined as the acceptance, as of a specified date, of a written application for coverage under the Plan on forms provided by the Company.
- 2.1.9 HIPAA:** Shall be defined as the Health Insurance Portability and Accountability Act of 1996, as amended (including amendments by PPACA), including all provisions codified at 42 U.S.C. §300gg, and the regulations promulgated thereunder.
- 2.1.10 Other Plan:** Shall be defined as any other health insurance or health benefits program offered to GovGuam's employees, retirees and their eligible Dependents, through an Agreement with GovGuam.
- 2.1.11 Participating Providers, Non-Participating Providers, Providers and Network:**
- 2.1.11.1** "Providers" shall be defined as health care providers who are duly licensed in their jurisdiction and acting within the scope of their license. Such term shall include, without limitation, physicians, hospitals, ancillary health Services facilities and ancillary health care providers.
  - 2.1.11.2** "Participating Providers" shall be defined as Providers who: (i) have directly, or indirectly through Company's agreements with other networks, entered into an agreement with the Company to provide the Covered Services; and (ii) are assigned from time to time by the Company to participate in the Network or any other network of Company pursuant to this Agreement.
  - 2.1.11.3** "Network" shall be defined as the network of Participating Providers. Network may also be referred to as "Plan Network".
  - 2.1.11.4** "Non-Participating Provider" shall be defined as Providers who have NOT been contracted by the Company to provide medical or dental services to Covered Persons.
  - 2.1.11.5** Payment of claims to Providers: Claims shall be paid based on the agreements that Company has with its providers whenever the services are rendered by a participating provider; and based on 140% of Medicare allowable rate for non-participating facilities and 105% of Medicare allowable rate for non-participating providers whenever the services are rendered by a non-participating provider.
- 2.1.12 PHSA:** Shall mean the Public Health Service Act provisions that are part of HIPAA (as defined above), some of which have been added to the PHSA by PPACA.

**2.1.13 Plan:** Shall be defined as the group health insurance benefits provided in accordance with this Agreement.

**2.1.14 Plan Year:** Shall be defined as the twelve (12) month period during which group health insurance benefits are provided under this Agreement.

**2.1.15 PPACA:** Shall mean the Patient Protection and Affordable Care Act of 2010, as amended.

**2.1.16 Premium:** Shall be defined as the dollar amount paid to the Company for the provision of this Plan to Covered Persons, including any contributions required from the Covered Persons.

**2.1.17 Services:** Shall be defined as medical, dental or other health care services, treatments, supplies, medications and equipment.

**2.1.18 Service Area:** Shall be defined as Guam and the Commonwealth of the Northern Mariana Islands. Enrollment to this Plan is limited to individuals residing in the Service Area. However, residence in the service area shall not be a requirement for enrollment for dependent children below 26 years of age.

**2.1.19 Subscriber:** Shall be defined as a Covered Person who is not a dependent as defined under the Plan.

**2.2 PPACA Requirements:** It is the intent of this Agreement to provide, at a minimum, all of the benefits, rights and responsibilities afforded as a result of the Patient Protection and Affordable Care Act (Public Law 111-148), and the regulations promulgated under the authority of this Act, except for the benefits, rights and responsibilities as specifically excluded by GovGuam.

**2.3 Guaranteed Renewability of Health Insurance Coverage:** In the event that GovGuam invokes the protection afforded by the Health Insurance Portability and Accountability Act of 1996, as amended, found at Section 2712 of the Public Health Services Act, and its regulations, for the guaranteed renewability of health insurance coverage the parties agree that coverage would be continued until a new contract is in place with the first ninety (90) days of coverage guaranteed at the same rate and plan designs.

### **ARTICLE 3**

#### **Services**

**3.1** Company shall provide Covered Persons with the group health insurance benefits, subject to the applicable limitations and conditions, set forth in this Agreement and the Certificate incorporated herein.

### **ARTICLE 4**

#### **Rates, Premiums and Experience Participation**

**4.1 Rates.** Company shall provide the group health insurance benefits set forth in the Certificate for the rates contained herein.

**4.2 Premium Payment.** GovGuam shall pay the Premium due under this Agreement to Company within thirty (30) days of

receipt of each monthly invoice detailing the current month's Premium due. Payment in full of all Premiums due constitutes a discharge of GovGuam's responsibility for the cost of benefits and administration provided under this Agreement. Should GovGuam fail to pay any Premium when due under this Agreement, Company shall have the right to suspend performance under this Agreement with respect to any Covered Person whose Premium payments have not been paid by GovGuam, in addition to the right of termination under Article 5.2.1 and Article 5.3. However, such suspension may only take place after Company provides written notice to GovGuam at least ten (10) days prior to the suspension stating the names of the Covered Persons at risk of suspension and the amount of Premium owed for each. Further, Company shall retroactively reinstate a Covered Person's right to benefits upon full payment of the past due Premiums only if the premiums are paid within 120 days after the notification of the suspension.

**4.3 Experience Participation.** No later than April 30, 2021, the Company shall present to GovGuam an annual experience participation accounting, which will produce either a positive or negative balance after accounting for all incurred claims and the \_\_\_\_\_% [14% or less, depending upon negotiated agreement] of premium guaranteed retention for the Company, such experience participation to be determined as follows:

**4.3.1** The term "Target Experience" shall mean the amount calculated by multiplying (a) the total Premiums earned by the Company for the full 12-month Plan Year ending the last day of the fiscal year under the Participating Policies issued to the government of Guam with respect to such Plan Year, by (2) **a percentage not lower than eighty-six percent (86%)**; The term "Actual Experience" shall be an amount calculated by subtracting from the Target Experience all claims incurred during such Plan Year and paid in the time period ending six months after the end of the Plan Year by the Health Insurance Provider under all the policies (PPO 1500, HSA 2000, and RSP); and Experience Refund means a positive Actual Experience.

**4.3.1.1** Claims are defined as: payments to medical, and pharmacy Providers; gym membership payments; airfare payments

**4.3.1.2** Excluded from Claims: network access fees, shared savings or other cost containment programs, wellness incentives other than gym memberships, quality improvement incentives

**4.3.1.3** Note: The intent of this the foregoing sections is that wellness and quality improvement incentives, quantifiable and payable directly to the member, will be included as claims in the numerator of the loss ratio calculation. Other general quality improvement activities and other costs are intended to be administrative costs for the carrier and are not to be included in the numerator of this calculation.

**4.3.1.4** Subtracted from Claims: pharmacy rebates accrued during the plan year

**4.3.1.5** Premiums are calculated as premiums paid in the course of the plan year October 1, 2020 to September 30, 2021: monthly enrollment by Plan and class, multiplied by applicable premium rates by Plan and class. Supporting documentation of this calculation must be provided with the annual statement of reconciliation. To be eligible for this calculation, claims must be incurred from 10/1/2020 through 9/30/2021 and paid through 3/31/2022, with no additional provision for Incurred But Not Paid claims or reserves."

**4.3.2** The term "Experience Refund" shall be a positive Actual Experience. See Title 4 GCA §4302.3(g). The difference between: 86% of Premiums less Claims will be refunded to the Government.

**4.3.3** To the extent the Actual Experience is positive (i.e., an amount greater than zero), such amount will be

called an "Experience Refund," and the Company shall remit such amount to GovGuam for placement into the "Section 2718 Fund" established by Title 4, Guam Code Annotated, Section 4302.3 (P.L. 31-233:XII:18).

- 4.3.4** This Experience Participation provision determines the combined Actual Experience of the policies. Identical provisions, describing the combined calculation, are included in each of the policies for convenience, but the result of the combined calculation shall be applied only once. If necessary to determine the distribution of any positive or negative amount of Actual Experience between the two policies, such amount may be allocated between the two policies in any share, at the discretion of GovGuam, as long as the total of the shares is equal to the combined amount of the Actual Experience.

If PPACA's Minimum Loss Ratio ("MLR") requirements result in payment, from the Company to GovGuam, of a refund for the 2020 calendar year MLR calculations, any Experience Refund calculated above in section 4.3.3, will be included in the carriers MRL for the PPACA and thereby no adjustment is necessary for ACA refunds.

## **ARTICLE 5**

### **Term and Termination**

- 5.1. Term.** The Agreement is for a one-year term beginning October 1, 2020 and ending September 30, 2021, unless terminated for major default in services, given by written notice from GovGuam to Company not less than ninety (90) calendar days or unless modified by mutual agreement.

**5.2. Termination:**

- 5.2.1. By Company.** If GovGuam fails to make any Premium payment within fifteen (15) days after receipt of a written notice of non-payment from Company, Company may terminate this Agreement by providing at least fifteen (15) days prior written notice of termination to GovGuam and all Subscribers under this Agreement.

**5.2.2. Individual termination.**

- 5.2.2.1. Non-payment of Premium.** Company may, in accordance with the notice provisions contained in §5.2.1, terminate the coverage of one or more individual Covered Persons for non-payment of Premium without terminating this Agreement as to other Covered Persons for whom Premiums have been received by Company.

- 5.2.2.2. Other Reasons.** Except for non-payment of Premiums, Company may only terminate a Covered Person as provided under the Plan.

- 5.2.2.3. Review of Termination.** Any Covered Person whose coverage is terminated pursuant to this Section 5.3 shall be entitled to a review through the PPACA Claims Procedure set forth in this Agreement, if so requested.

- 5.3. Effect of Termination.** In the event of termination of this Agreement for a Covered Person, Company shall be responsible for providing the benefits contained in this Agreement up to the effective date of termination provided by GovGuam which will not be later than the last day of the pay period for which premium has been remitted. GovGuam shall be responsible for payment of the Premiums up to said effective date.

- 5.4. Termination of Subscriber's Coverage.** If a Subscriber's coverage terminates, the coverage of all of that Subscriber's Covered Dependents also terminates as of the same date.

## ARTICLE 6

### Enrollment

- 6.1 Regular Open Enrollment.** The parties to this Agreement shall establish one (1) open Enrollment period, which shall be the same period as for all Other Plans offering health insurance and/or health benefits programs to GovGuam. During such period GovGuam shall provide Company with the assistance and cooperation detailed in Article 8. Except as provided in §6.1.1, §6.2 and §6.3 below, the open Enrollment period is the only time during which current and potential Covered Persons shall be allowed to enroll in this Plan or to disenroll from this Plan. The effective date of such Enrollment or disenrollment shall be the effective date of this Agreement, unless otherwise specified by GovGuam in accordance with this Agreement, or unless otherwise required under HIPAA.
- 6.1.1 Special Open Enrollments.** If GovGuam holds a special open Enrollment during the Plan Year, Company shall participate in such special open Enrollment, unless otherwise agreed by the parties, or unless the Plan is no longer to be offered as of the entry date of the special open Enrollment period. If the special open Enrollment shall impact on rates, the parties shall negotiate an appropriate change prior to the participation of Company in such special open Enrollment.
- 6.2 Newly Eligible Persons.** Subject to §6.3, any individual who becomes a GovGuam employee, or for any other reason first becomes eligible to be a Covered Person outside the open Enrollment period, shall have thirty-one (31) days after the date on which he/she became eligible to become a Covered Person. The effective date of such Enrollment shall be as specified in the applicable Plan certificate.
- 6.3 Otherwise Eligible.** Enrollment shall be restricted to only those occasions provided for in this Article 6 unless an individual is eligible for Enrollment under the HIPAA provisions allowing special enrollment rights. Enrollment shall be in accordance with HIPAA and PPACA requirements.
- 6.4 Disenrollment Permitted.** Covered persons for whom this group health insurance is secondary to Medicare coverage, shall be permitted to disenroll with 30 days' notice to the Company, and enroll in the Retiree Supplemental Plan.

## ARTICLE 7

### Company's Responsibilities

- 7.1 Marketing.** Company shall print and provide necessary brochures, announcements, instructions, Enrollment forms, and certificates for Enrollment purposes and for distribution to potential Covered Persons. Company shall be responsible for the dissemination of information to potential Covered Persons regarding the Plan. Company shall provide agreed upon quarterly communication to members clearly defining the benefits of the current plans in place. Company will work directly with the Government of Guam to determine their needs in distribution, and type of communication desired.
- 7.2 Benefits to be Provided.** Company shall, in consideration of receipt of applicable Premiums, provide the benefits contained in this Agreement through the earlier of the effective date of a Covered Person's termination or the termination of this Agreement.

- 7.3 Financial and Medical Cost Information.** In accordance with Title 4 GCA, Section 4302 (b) and (g), Company shall provide GovGuam detailed claims utilization and cost information, and shall provide upon reasonable request, the most recent audited financial statements, experience data, and any other information pertaining to this Agreement.
- 7.4 Confidential Information.** The parties hereto shall maintain the confidentiality of any and all medical records which shall be in their possession and control, and such information shall only be released or disseminated pursuant to the valid authorization of the Covered Person whose medical condition is reflected in such medical records or as shall be otherwise permitted under applicable law. Upon request and subject to applicable law, Company shall make available to GovGuam medical records to assure Covered Persons are receiving adequate and appropriate benefits in accordance with the Certificate.
- 7.5 Errors and Omission Insurance.** The Company shall use all reasonable efforts to secure and maintain current errors and omission liability insurance of at least One Million Dollars (\$1,000,000) during the term of this Agreement.
- 7.6 Payment of Claims.** Company shall pay claims in accordance with the Guam Health Care Prompt Payment Act of 2000 and the applicable claims payment requirements of PPACA. Appeals of claim denials shall comply with applicable requirements of PPACA Section 2719 and regulations thereto on internal claims appeal process and external appeals process review requirements.
- 7.7 Prompt Payment Report.** Company shall send a status report on a claim filed by Covered Person against a Provider within forty-five (45) days after receipt if the claim is still pending disposition by the Company and Provider. At a minimum the report shall indicate that the claim is under review and the Company is working to resolve the claim with the Provider. The Company shall send another status report on the claim to the Covered Person with a copy to the Provider thirty (30) days from the date the first status report was sent to the Covered Person if the claim has not been resolved.
- 7.8 Notification.** Company shall fulfill the notice requirements of the Women's Health and Cancer Rights Act of 1998, and the Newborns' and Mothers' Health Protection Act of 1996, and shall be responsible for notice requirements applicable to PPACA requirements.
- 7.9 Termination Notification.** If the Company terminates this Agreement, Company shall provide notice announcing its termination at least fifteen (15) days prior to the date of termination on the Company's website, an ad in any of the local newspaper publications, and email to subscribers of the Company's Plan. Further, Company shall fully cooperate with GovGuam in transitioning Covered Persons to Other Plans.
- 7.10 Sole Source Provider.** If there is a Covered Service which is provided on Guam by only one provider who is not a Participating Provider, the eligible Charges for such services shall be as if the sole source provider were a participating provider.
- 7.11 Online Access Capabilities.** The Company shall provide, for the benefit of the Covered Person and GovGuam, the following online access capabilities:
- 7.11.1** Online access is available twenty-four (24) hours a day, seven (7) days a week in accordance with Section 508 standards of the Rehabilitation Act of 1973 as amended.
  - 7.11.2** For the Covered Person, access to a Personal Claim Record ("PCR"), whichever is applicable to the Company, to include historical health conditions, prescription medications, office visit summary and procedures where a medical claim has been filed.



- 7.11.3** For the Covered Person, access to record of medical and drug claims.
- 7.11.4** For the Covered Person, ability to verify eligibility.
- 7.11.5** Ability of Providers to submit claims through a separate portal rather than through Company's website for payment.
- 7.11.6** For the Covered Person, GovGuam, and Providers access to Schedule of Benefits, Member Handbooks and Provider Network Information.
- 7.11.7** For the Covered Person, ability to print PHR or PCR, whichever is applicable to the Company, to federal compliance standard file formats or plain text file.
- 7.11.8** For the Covered Person, ability to print online membership cards.
- 7.11.9** For the Covered Person, access to interactive tools for researching health issues, treatments, and risk assessment tools for health conditions.

## **ARTICLE 8**

### **GovGuam's Responsibilities**

- 8.1 Marketing.** GovGuam shall give Company reasonable assistance and cooperation to enable Company to contact all sources of Enrollment, to disseminate all information, to distribute and post literature, to provide access to employees during working hours, to provide all employees' names and addresses, and to instruct department heads to provide Company's representatives reasonable opportunity for personal contact with employees, consistent with that given other GovGuam contracted health plans, for the purpose of explaining Company's Plan to GovGuam employees.
- 8.2 Responsible Persons.** GovGuam shall designate persons within each agency, department and branch, who shall be responsible for the handling of health insurance problems, Enrollment, and cancellations within their particular department. These designated persons shall be available to attend meetings on government time for the purpose of reviewing administrative procedures, and to assist in problem solving relating to this Agreement.
- 8.3 Personnel Changes.** GovGuam shall provide written notice to Company of terminations, resignations, department transfers, and the like, so that coverage can be terminated at the appropriate time. GovGuam shall make available to Company a computer listing of each employee receiving an applicable payroll deduction for Premiums no later than fifteen (15) working days following each pay period.
- 8.4 Individual with Questionable Status.** If GovGuam does not provide the list of employees as required in 8.3, Company shall have the right to charge an individual whose Enrollment is in question for any Covered Services rendered prior to receipt of written verification of eligibility and Enrollment by GovGuam. If such individual is subsequently determined to be a Covered Person, and GovGuam remits a Premium payment for the Covered Person for the period for which the Covered Services were rendered, Company shall cancel all charges to the Covered Person and return any amounts collected. If Company files a written objection to an Enrollment list forwarded by GovGuam, then within thirty (30) days after the filing, GovGuam shall provide Company with the applicable change of status forms, Enrollment cards, and other documentation substantiating the accuracy of the Enrollment records and meet with Company to reconcile any differences. Evaluation of such individual's entitlement shall be handled in accordance with PPACA's applicable Claims Procedure requirements, taking into account any applicable PPACA prohibition on rescissions and any applicable PPACA

requirement that costs of care be provided or continued during evaluation period

**8.5 No restrictions on Enrollment.** GovGuam shall place no restriction or limitation on the percentage or number of Enrollments in the Plan.

## ARTICLE 9

### Covered Person's Responsibilities

**9.1 Acceptance.** By Enrolling in the Plan, all Covered Persons agree to the terms, provisions and conditions of this Agreement.

**9.2 Continued Residency.** Except as specifically stated in this Agreement, Enrollment in the Plan shall be limited to Covered Persons domiciled in the Service Area, and who do not reside outside the service area for more than one hundred eighty-two (182) days per plan year, Company shall be entitled to require substantiation from a Covered Person to determine the Covered Person's Domicile and may deny benefits under this Agreement for lack thereof. For a Covered Person Domiciled in the Service Area, time spent receiving continuous medical Services out of the Service Area shall not count toward the one hundred eighty-two (182) day maximum, provided the receipt of such Services precludes returning to the Service Area. Further, time spent by a parent or Spouse of such covered person shall not count toward the one hundred eighty-two (182) day maximum, provided the parent or Spouse is providing necessary assistance to the Covered Person and further provided that under no circumstance can there be more than one such caregiver hereunder for any incident of care out of the Service Area.

## ARTICLE 10

### Notices

**10.1 Address of Record.** For the purpose of communication and services of notice under this Agreement, the parties' addresses are as follows:

To: GovGuam  
Director  
Department of  
Administration  
Government of Guam  
590 S. Marine Corps Dr., Ste.  
224 Tamuning, Guam 96913

**10.2 Method of Service.** Notices shall be in writing and effective upon either receipt of a hand-delivered notice or the posting of notice by first class mail, postage prepaid, to the address listed herein or such other address as a party may designate by providing written notice to the other party from time to time.

## ARTICLE 11

### Dispute Resolution

- 11.1 Mandatory Disputes Resolution Clause (As amended but consistent with 2 GAR Div. 4 § 9103(g) and applicable law).** GovGuam and the Company agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Company shall request GovGuam in writing to issue a final decision within sixty days after receipt of the written request. If GovGuam does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Company may proceed as though GovGuam had issued a decision adverse to the Company. GovGuam shall immediately furnish a copy of the decision to the Company, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt. GovGuam's decision shall be final and conclusive, unless fraudulent or unless the Company appeals the decision. This subsection applies to appeals of GovGuam's decision on a dispute. For money owed by or to GovGuam under this Agreement, the Company shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by GovGuam or from the date when a decision should have been rendered. For all other claims by or against GovGuam arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of GovGuam. Appeals to the Office of the Public Auditor must be made within sixty days of GovGuam's decision or from the date the decision should have been made. The Company shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws. The Company shall comply with GovGuam's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Company claims a material breach of this Agreement by GovGuam. However, if GovGuam determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Company shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by GovGuam.

## **ARTICLE 12**

### **Governing Law**

- 12.1** The rights and responsibilities of the parties and their respective officers, directors, employees, agents and representatives under this Agreement and their performance hereunder shall be governed by the laws of Guam.

## **ARTICLE 13**

### **Miscellaneous**

- 13.1 Government Laws and Regulation.** Company guarantees the negotiated rates shall remain in effect for the Plan Year. However, if during such year the Government of the United States or GovGuam enacts statutes or promulgates regulations which (i) require that the Company offer different coverage to Covered Persons than that specifically provided in this Agreement; or (ii) causes an increase or decrease in Provider rates or other costs, the parties reserve the right on thirty (30) days written notice to the other to adjust the Premiums if the parties mutually determine that such mandate or law shall change Company's costs under this Agreement by more than five percent (5%). Where the Agreement indicates that a PPACA requirement might override a specific limitation, this section 13.1 shall apply if it is determined that a PPACA override is in fact required.
- 13.2 Contingent Fee Warranty.** Company warrants that it has not retained anyone to solicit or secure this Agreement for payment of a commission, percentage, brokerage, or contingent fee, except for Company's bona fide employees

or any bona fide established commercial selling agencies which Company may disclose to GovGuam.

- 13.3 Gratuity Warranty.** Company warrants that it has not violated, is not violating, and promises it shall not violate the prohibition against gratuities and kickbacks set forth in Guam Procurement Regulations at Title 2, GAR, Div. 4 §11107.
- 13.4 Personal Interest Disclaimer.** Company warrants that no member of any governing body of any agency of GovGuam and no officer, employee, or agent of GovGuam who exercises any functions or responsibilities in connection with the work to which this Agreement pertains has or shall have any personal interest, direct or indirect, in this Agreement, except that such members, officers or employees may be Covered Persons under the Plan. Company further warrants that no member of the Guam Legislature and no other official of GovGuam who exercises functions and responsibilities in connection with the work to which this Agreement pertains has or shall have any personal interest, direct or indirect, in this Agreement except as possible Covered Persons under the Plan.
- 13.5 Captions.** The captions, section numbers and article numbers and marginal notes appearing in this Agreement or in any copies of this Agreement are placed there only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement.
- 13.6 Waiver.** The waiver of any breach of this Agreement by either party shall not be deemed a waiver of any other breach or a waiver of any subsequent breach of the same nature.
- 13.7 Excused Non-Performance.** The parties' performance hereunder shall be excused when the failure of performance is caused by fire, explosion, acts of God, civil disorder, war, riot or other event not reasonably within the control of the party.
- 13.8 Entire Agreement.** This Agreement, including and Exhibits \_\_\_\_ through \_\_\_\_, is the entire Agreement between the parties. There are no terms or obligations other than those contained herein applicable to this Agreement. This instrument shall supersede all previous communications or representations, whether verbal or written between the parties.
- 13.9 Amendment.** This Agreement may only be amended upon the written consent of both parties.
- 13.10 Time of Essence.** Time is expressly made of the essence in this Agreement and for performance hereunder.
- 13.11 Limitation of Actions.** Any action in relation to this Agreement must be brought no later than one (1) year from the time such claim arises or should have been reasonably discovered.
- 13.12 Third Party Rights.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to this Agreement and their respective successors and assigns.
- 13.13 Successors in Interest.** Each and all of the covenants, conditions, and restrictions in this Agreement shall inure to the benefit of and shall be binding upon the assignees and successors in interest of Company. However, Company shall not be entitled to assign its interest in this Agreement, or any prior or future agreement with GovGuam, without the express written consent of GovGuam.
- 13.14 Severability.** If any term or provision of this Agreement or the application thereof shall to any extent be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such remainder, other than

as held invalid or unenforceable, shall not be affected and each term and condition of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**13.15 Counterparts.** This Agreement, including Exhibits \_\_\_\_ through \_\_\_\_, may be executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

**13.16 Legal Compliance.** Company shall comply with applicable federal and local statutes and regulations, including the certification requirements of HIPAA and applicable requirements of PPACA and the PHSA. To the extent not preempted by the laws of the United States, this Agreement will be construed in accordance with and governed by the laws of Guam. In the event of conflict between any provision of this Agreement and applicable law, the law shall govern.

**13.17 Determination of Currency Exchange Payments.** When a service is rendered outside of the United States, the claims shall be paid in accordance with Company's agreements with its participating providers. Claims for nonparticipating providers will be reimbursed using the Philippines fees as a reference. Additionally, claims incurred outside of the United States will be based on the date of service and will be converted according to the conversion rate, for cash transactions, against the U.S. Dollar as found in XE.Com and for credit card transactions, against the utilized specific conversion rate for the card used. For multiple dates of service, the rate will be calculated based on the last date of service or payment, whichever is earlier in time.

**13.18 Restriction Against Contractor Employing Sex Offenders to Work at Government of Guam Venues.** The Company warrants that no person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 Guam Code Annotated, in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, shall work for the Company on property of the government of Guam other than a public highway. Further, the Company warrants that if any person providing services on behalf of the Company is convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or an offense as defined in Article 2 of Chapter 28, Title 9 Guam Code Annotated or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at such agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

**13.19 Ethical Standards.** With respect to this Agreement and any other contract the Company may have, or wish to enter into, with any government of Guam agency, Company represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

**13.20 Minimum Wages As Determined by U.S. Government.** Company agrees to comply with Title 5, Guam Code Annotated, Sections 5801 and 5802. In the event that Company employs persons whose purpose, in whole or in part, is the direct delivery of service contracted by the Government, then the Company shall pay such employees, at a minimum, in accordance with the U.S. Department of Labor Wage Determination for Guam and the Commonwealth of the Northern Marianas Islands in effect on the date of this Agreement. In the event that this Agreement is renewed by the Government and the Contractor, at the time of the renewal, Company shall pay such employees in accordance with the Wage Determination for Guam and the Commonwealth of the Northern Marianas Islands promulgated on a date most recent to the renewal date. Company agrees to provide employees whose purpose, in whole or in part, is the direct delivery of service contracted by the Government those mandated health and similar benefits having a minimal value as detailed in the U.S. Department of Labor Wage Determination for Guam and the Commonwealth of the Northern Marianas Islands, and guarantee such employees a minimum of ten (10) paid holidays per annum

per employee.

**\*\*SIGNATURE PAGE FOLLOWS\*\***

IN WITNESS WHEREOF, GovGuam and Company have signed this Agreement on the aforementioned date.

**Government of Guam**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Edward M. Birn, Director  
Department of Administration

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Dafne Shimizu, Director  
Department of Revenue & Taxation

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Lester Carlson, Director  
Bureau of Budget and Management Research

Date: \_\_\_\_\_

Approved as to Legality and Form

Signed: \_\_\_\_\_

Leevin Taitano Camacho, Attorney General of Guam  
Office of the Attorney General

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

The Honorable Lourdes A. Leon Guerrero  
Governor of Guam

Date: \_\_\_\_\_